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I have already asked  
to check this out not knowing  
of your interest in the subject  
area.

I'd appreciate your comments  
nonetheless - oral! Full Cmtee  
mk-up is tomorrow but we can  
catch it on Senate side.

STAT

Date

95TH CONGRESS  
2D SESSION

# H. R. 13364

## IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 1978

Mr. PREYER (for himself, Mr. BRADEMAS, and Mr. ERTEL) introduced the following bill; which was referred jointly to the Committees on House Administration and Government Operations

## A BILL

To amend title 44 to insure the preservation of and public access to the official records of the President, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "Presidential Records Act  
4 of 1978".

5 RECORDS MANAGEMENT, PRESERVATION, AND PUBLIC

6 AVAILABILITY

7 SEC. 2. (a) Title 44 of the United States Code is  
8 amended by adding immediately after chapter 21 the follow-  
9 ing new chapter:

I

1           **"Chapter 22.—PRESIDENTIAL RECORDS**

"Sec.

"2201. Definitions.

"2202. Ownership of Presidential records.

"2203. Management and custody of Presidential records.

"2204. Restrictions on access to Presidential records.

"2205. Exceptions to restriction on access.

"2206. Regulations.

"2207. Vice-Presidential records.

2           **"§ 2201. Definitions**

3           "As used in this chapter—

4           " (1) The term 'documentary material' means all  
5           books, correspondence, memorandums, documents, pa-  
6           pers, pamphlets, works of art, models, pictures, photo-  
7           graphs, plates, maps, films, and motion pictures, includ-  
8           ing, but not limited to, audio, audiovisual, or other  
9           electronic or mechanical recordings.

10          " (2) The term 'Presidential records' means docu-  
11          mentary materials created or received by the President,  
12          his immediate staff, or a unit or individual of the Execu-  
13          tive Office of the President whose function is to advise  
14          and assist the President, in the course of conducting  
15          activities which relate to or have an effect upon the  
16          carrying out of the constitutional, statutory, or other  
17          official or ceremonial duties of the President. Such term—

18          " (A) includes any documentary materials re-  
19          lating to the political activities of the President or  
20          members of his staff, but only if such activities relate  
21          to or have an effect upon the carrying out of con-

1           stitutional, statutory, or other official or ceremonial  
2           duties of the President; but

3           “(B) does not include any documentary ma-  
4           terials that are (i) official records of an agency  
5           (as defined in section 552 (e) of title 5, United  
6           States Code); (ii) personal records; (iii) stocks  
7           of publications and stationery; or (iv) extra copies  
8           of documents produced only for convenience of  
9           reference, when such copies are clearly so identified.

10          “(3) The term ‘personal records’ means all docu-  
11          mentary materials, of a purely private or nonpublic  
12          character which do not relate to or have an effect upon  
13          the carrying out of the constitutional, statutory, or  
14          other official or ceremonial duties of the President.  
15          Such term includes—

16          “(A) diaries, journals, or other personal notes  
17          serving as the functional equivalent of a diary  
18          or journal which are not prepared or utilized for,  
19          or circulated or communicated in the course of,  
20          transacting Government business, and

21          “(B) materials relating to private political  
22          associations, and having no relation to or effect upon  
23          the carrying out of constitutional, statutory, or  
24          other official or ceremonial duties of the President.

(4) The term 'Archivist' means the Archivist  
of the United States.

**§ 2202. Ownership of Presidential records**

"The United States shall reserve and retain complete  
ownership, possession, and control of Presidential records;  
and such records shall be administered in accordance with  
the provisions of this chapter.

**§ 2203. Management and custody of Presidential records**

"(a) Through the implementation of records manage-  
ment controls and other necessary actions, the President  
shall take such steps as may be necessary to assure that the  
activities, deliberations, decisions, and policies that reflect  
the performance of his constitutional, statutory, or other  
official or ceremonial duties are adequately documented and  
that such records are maintained as Presidential records pur-  
suant to the requirements of this section and other provisions  
of law.

"(b) Documentary materials produced or received by  
the President, his staff, or units or individuals in the Execu-  
tive Office of the President the function of which is to advise  
and assist the President, shall, to the extent practicable, be  
categorized as Presidential records or personal records upon  
their creation or receipt and be filed separately.

"(c) During his term of office, the President may dis-  
pose of those of his Presidential records that no longer have

1 administrative, historical, informational, or evidentiary value,  
2 if—

3 “(1) the President obtains the views, in writing,  
4 of the Archivist concerning the proposed disposal sched-  
5 ule of such Presidential records; and

6 “(2) copies of such disposal schedule and of such  
7 views are submitted to each House of the Congress at  
8 least sixty days in advance of the proposed disposal date.

9 “(d) (1) Upon the conclusion of a President's term of  
10 office, the Archivist of the United States shall assume re-  
11 sponsibility for the custody, control, and preservation of,  
12 and access to, the Presidential records of that President.

13 “(2) The Archivist shall deposit all such Presidential  
14 records in a Presidential archival depository or another  
15 archival facility operated by the United States. The Archivist  
16 is authorized to designate, after consultation with the Presi-  
17 dent, a director at each despository or facility, who shall be  
18 responsible for the care and preservation of such records.

19 “(3) The Archivist is authorized to dispose of such Pres-  
20 idential records which he has appraised and determined to  
21 have insufficient administrative, historical, informational, or  
22 evidentiary value to warrant their continued preservation.  
23 Notice of such disposal shall be published in the Federal  
24 Register at least sixty days in advance of the proposed dis-  
25 posal date. Publication of such notice shall constitute a final

1 agency action for purposes of review under chapter 7 of  
2 title 5, United States Code.

3 **"§ 2204. Restrictions on access to Presidential records**

4 " (a) Prior to the conclusion of his term of office, the  
5 President shall specify durations, not to exceed ten years, for  
6 which access shall be restricted with respect to information,  
7 in a Presidential record, within one or more of the following  
8 categories:

9 " (1) (A) specifically authorized under criteria es-  
10 tablished by an Executive order to be kept secret in the  
11 interest of national defense or foreign policy and (B) in  
12 fact properly classified pursuant to such Executive order;

13 " (2) relating to appointments to executive or judi-  
14 cial positions;

15 " (3) specifically exempted from disclosure by stat-  
16 ute (other than sections 552 and 552b of title 5, United  
17 States Code), provided that such statute (A) requires  
18 that the material be withheld from the public in such a  
19 manner as to leave no discretion on the issue, or (B) es-  
20 tablishes particular criteria for withholding or refers to  
21 particular types of material to be withheld;

22 " (4) trade secrets and commercial or financial in-  
23 formation obtained from a person and privileged or  
24 confidential;

25 " (5) confidential communications requesting or

1 submitting advice, between the President and his ad-  
2 visers, or between such advisers; or

3 “(6) personnel and medical files and similar files  
4 the disclosure of which would constitute a clearly un-  
5 warranted invasion of personal privacy.

6 “(b) (1) Any Presidential record or reasonably seg-  
7 regable portion thereof containing information within a cate-  
8 gory restricted by the President under subsection (a) shall  
9 be so designated by the Archivist and access thereto shall be  
10 restricted until the earlier of—

11 “(A) (i) the date on which such President waives  
12 the restriction on disclosure of such record, or

13 “(ii) the expiration of the duration specified under  
14 subsection (a) for the category of information on the  
15 basis of which access to such record has been restricted;  
16 or

17 “(B) upon a determination by the Archivist that  
18 such record or reasonably segregable portion thereof,  
19 or any significant element or aspect of the information  
20 contained in such record or reasonably segregable por-  
21 tion thereof, has been placed in the public domain  
22 through publication by such President or his aides or  
23 associates.

24 “(2) Any such record which does not contain infor-  
25 mation within a category restricted by the President under



1 subsection (a), or contains information within such a cate-  
2 gory for which the duration of restricted access has expired,  
3 shall be exempt from disclosure under the provisions of sub-  
4 section (c) until the earlier of—

5 “(A) the date which is five years after the date on  
6 which the Archivist obtains custody of such record pur-  
7 suant to section 2203 (d) (1) ; or

8 “(B) the date on which the Archivist completes  
9 the processing and organization of such records or in-  
10 tegral file segment thereof.

11 “(3) During the period of restricted access specified  
12 pursuant to subsection (b) (1) (A), the determination  
13 whether access to a Presidential record or reasonably segre-  
14 gable portion thereof shall be restricted, shall be made by the  
15 Archivist, in his discretion, after consultation with such  
16 President, and, during such period, such determinations shall  
17 not be subject to judicial review.

18 “(c) Subject to the limitations on access imposed pur-  
19 suant to subsections (a) and (b), Presidential records shall  
20 be administered in accordance with section 552 of title 5,  
21 United States Code, and for the purposes of such section such  
22 records shall be deemed to be records of the General Services  
23 Administration. Access to such records shall be granted on  
24 nondiscriminatory terms.

25 “(d) Upon the death or disability of a President or for-

1. former President, any discretion or authority the President may  
2. have had under this chapter shall be exercised by the Archi-  
3. vist unless otherwise previously provided by the President in  
4. a written notice to the Archivist.

5. **“§ 2205. Exceptions to restricted access**

6.       “(a) Notwithstanding any restrictions on access imposed  
7. pursuant to section 2204—

8.       “(1) the Archivist and persons employed by the  
9. Archivist engaged in the performance of normal archi-  
10. val work shall be permitted access to Presidential rec-  
11. ords in the custody of the Archivist;

12.       “(2) subject to any rights, defenses, or privileges  
13. which the United States or any other agency or person  
14. may invoke, Presidential records shall be subject to  
15. subpoena or other judicial process issued by a court of  
16. competent jurisdiction for the purposes of any criminal  
17. investigation or proceeding;

18.       “(3) such records shall be available—

19.       “(A) to an incumbent President if such rec-  
20. ords contain information needed for the conduct of  
21. his current business of his office which is not otherwise  
22. available; and

23.       “(B) to either House of Congress, or, to the  
24. extent of matter within its jurisdiction, any commit-  
25. tee or subcommittee thereof if such records contain

1 information needed for the conduct of its business  
2 which is not otherwise available; and

3 “(4) the Presidential records of a former President  
4 shall be available to such former President or his design-  
5 nated representative.

6 **“§ 2206. Regulations**

7 “The Archivist shall promulgate in accordance with  
8 section 553 of title 5, United States Code, regulations nec-  
9 essary to carry out the provisions of this chapter which  
10 shall include—

11 “(1) provisions for advance public notice and de-  
12 scription of any Presidential records scheduled for dis-  
13 posal pursuant to section 2203 (d) (3) ; and

14 “(2) provisions for providing notice to the former  
15 President when materials to which access would other-  
16 wise be restricted pursuant to section 2204 (a) are to  
17 be made available in accordance with section 2205 (2)  
18 or (3).

19 **“§ 2207. Vice-Presidential records**

20 “Vice-Presidential records shall be subject to the provi-  
21 sions of this chapter in the same manner as Presidential  
22 records. The duties and responsibilities of the Vice President,  
23 with respect to Vice-Presidential records, shall be the same  
24 as the duties and responsibilities of the President under this  
25 chapter with respect to Presidential records. The authority

1 of the Archivist with respect to Vice-Presidential records  
2 shall be the same as the authority of the Archivist under this  
3 chapter with respect to Presidential records, except that  
4 such Vice-Presidential records shall not be deposited in an  
5 archival depository other than the depository of the Presi-  
6 dential records of the same administration. Nothing in this  
7 chapter shall be construed to authorize the establishment of  
8 separate archival depositories for such Vice-Presidential  
9 records.”

10 (b) (1) The table of chapters for title 44, United States  
11 Code, is amended by inserting immediately after the item  
12 relating to chapter 21 the following new item:

“22. Presidential Records..... ‘2201’.”

13 (2) Section 2102 of title 44, United States Code is  
14 amended by striking out the text thereof and inserting in  
15 lieu thereof the following:

16 “The President shall, by and with the advice and con-  
17 sent of the Senate, appoint the Archivist of the United States  
18 for a term of ten years. The Archivist may only be removed  
19 for good cause.”.

20 (3) Section 2107 of title 44, United States Code, is  
21 amended by adding at the end thereof the following new  
22 sentence: “This section shall not apply in the case of any  
23 Presidential records which are subject to the provisions of  
24 chapter 22 of this title.”.

(4) Section 2108 (c) of title 44 is amended by adding  
at the end thereof the following: "Only the first two sen-  
tences of this subsection shall apply to Presidential records  
(as defined in section 2201(2) of this title)".

SEC. 3. The amendments made by this Act shall be ef-  
fective with respect to any Presidential records (as defined  
in section 2201(2) of title 44, as amended by section 2 of  
this Act) created on or after January 20, 1981, by a Presi-  
dent taking office on or after such date.

SEC. 4. If any provision of this Act is held invalid for  
any reason by any court, the validity and legal effect of the  
remaining provisions shall not be affected thereby.

The President shall be elected by the electors for a term  
of four years, beginning on January 20, 1981, and shall  
hold office until January 20, 1985.

Section 2105 of title 44 is amended by adding at the  
end thereof the following: "The President shall be elected  
by the electors for a term of four years, beginning on  
January 20, 1981, and shall hold office until January 20,  
1985."

95TH CONGRESS  
2D SESSION

**H. R. 13364**

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## **A BILL**

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To amend title 44 to insure the preservation of  
and public access to the official records of  
the President, and for other purposes.

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By Mr. PREYER, Mr. BRADENAS, and Mr. ERTLE.

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JUNE 29, 1978

Referred jointly to the Committees on House Admin-  
istration and Government Operations